

Notice of Allowability

Application No.

10/069,909

Examiner

Russell Kallis

Applicant(s)

GOLDSBROUGH, ANDREW

Art Unit

1638

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to amendment filed 6/12/2002.
2. ☒ The allowed claim(s) is/are 1,3,4 and 6-12 (renumbered claims 1-10).
3. ☐ The drawings filed on _____ are accepted by the Examiner.
4. ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) ☒ All b) ☐ Some* c) ☐ None of the:
 1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

* Certified copies not received: _____.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

5. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
 6. ☒ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
 - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
 - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date _____.
 - (b) ☒ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date 11/22/2004.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
7. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

1. ☐ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☒ Information Disclosure Statements (PTO-1449 or PTO/SB/08),
Paper No./Mail Date 2/28/2002
4. ☐ Examiner's Comment Regarding Requirement for Deposit
of Biological Material
5. ☐ Notice of Informal Patent Application (PTO-152)
6. ☒ Interview Summary (PTO-413),
Paper No./Mail Date 11/22/2004.
7. ☒ Examiner's Amendment/Comment
8. ☒ Examiner's Statement of Reasons for Allowance
9. ☐ Other _____.

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EXAMINER'S AMENDMENT

An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with Pat Kammerer on 11/24/2004.

The application has been amended as follows:

In the specification:

On page 7, line 6, delete "Figure 8 is a schematic illustration of a particle bombardment chamber (not to scale)".

In the claims:

Claims 2 and 5 are canceled.

In Claim 1, line 1, delete "A" and insert --An isolated--.

Claim 3 (currently amended) A DNA construct comprising [a] the DNA sequence [in accordance with any one of the preceding claims and] of claim 1 operably linked to a plant-expressible structural [gene] coding sequence [under the regulatory control of the ubiquitin regulatory system of said sequence].

Claim 6 (currently amended) A method of transforming a host cell by introducing into the cell [a] the DNA sequence of claim 1, the DNA construct of claim 3 or the expression vector of claim 4 [in accordance with any one of the claims 1 to 4].

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Claim 8 (currently amended) A host cell[, preferably plant cell, into which has been introduced] transformed with the DNA sequence of claim 1, the DNA construct of claim 3, or the expression vector [in accordance with] of claim[s] [1-]4.

Claim 9 (currently amended) A method of expressing a structural [gene] coding sequence in a host cell in a constitutive manner[, the method] comprising [the steps of causing to be present in] transforming the host cell [the] with the DNA sequence of claim 1, the DNA construct of claim 3, or the expression vector of claim 4, [structural gene operably linked to a DNA sequence in accordance with claim 1 or 2; causing] wherein the structural [gene to be expressed] coding sequence is constitutively [by] expressed in the host cell.

Claim 10 (currently amended) A transgenic plant comprising the DNA sequence [according to] of claim[s] 1, [or 2 or comprising] the DNA construct [according to] of claim 3, or [comprising] the expression vector [according to] of claim 4.

Claim 11 (currently amended) The transgenic plant of claim 10 wherein the plant is a monocot [such as] selected from the group consisting of wheat, barley, oat, corn or maize.

Claim 12 (currently amended) A transgenic plant seed comprising the DNA sequence [according to] of claim[s] 1, [or 2 or comprising] the DNA construct [according to] of claim 3, or [comprising] the expression vector [according to] of claim 4.

Drawings

The following changes to the drawings are required by the examiner and agreed upon by applicant: Figures 1 and 4 should be on separate pages and in sequential order; Figure 8 is non-essential to the invention and should be deleted; and the figure designation in Figures 2 and 3,

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i.e. "Figure 2" and "Figure 3", should be larger in size for easier legibility. In order to avoid abandonment of the application, applicant must make these above agreed upon drawing changes.

The following is an examiner's statement of reasons for allowance: Claims 1, 3-4 and 6-12 are deemed free of the prior art given the failure of the prior art to teach or reasonably suggest a modified ubiquitin regulatory system lacking heat shock elements of SEQ ID NO: 8 and transformed host cells, plants and seeds thereof.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Russell Kallis whose telephone number is (571) 272-0798. The examiner can normally be reached on M-F 8:30-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Amy Nelson can be reached on (571) 272-0804. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Russell Kallis Ph.D.
November 22, 2004

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November 22, 2004



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